

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JAMES CHRISTOPHER BUTCHER,

Plaintiff(s),

v.

KILOLO KIJAKAZI,

Defendant(s).

Case No.2:23-CV-350 JCM (NJK)

ORDER

Presently before the court is the plaintiff's (James Christopher Butcher) motion for reversal and remand of the Social Security Commissioner's final decision in his case. (ECF No. 16). The defendant, the commissioner of the Social Security Administration (hereinafter, the "Commissioner"), filed a countermotion and response to affirm the decision and deny Butcher's motion. (ECF Nos. 18, 19). Butcher responded in support of his motion. (ECF No. 21).

Also before the court is the magistrate judge's report and recommendation ("R&R") denying Butcher's motion and granting the Commissioner's countermotion. (ECF No. 22). Butcher filed objections (ECF No. 24), but the Commissioner did not respond. For the reasons set forth below, the court remands the matter back to the magistrate judge.

**I. Background**

This is an appeal from the Commissioner's denial of Social Security disability benefits to Butcher. (ECF No. 10). Butcher asks this court to reverse the Commissioner's final decision and remand the matter for further administrative proceedings. (ECF No. 16, at 2). The court summarizes the facts provided in the magistrate judge's R&R as necessary for the resolution of Butcher's objection. (ECF No. 22).

1 Butcher filed for disability insurance benefits under Title II of the Social Security Act in  
2 2014, alleging a disability onset date of January 13, 2012. (ECF No. 22, at 2). Butcher’s claim  
3 was denied once and then again on reconsideration. (*Id.* at 2–3). Butcher then requested—and  
4 received—a hearing before an administrative law judge (“ALJ”), ALJ Hoover. (*Id.* at 3). ALJ  
5 Hoover found that Butcher was not disabled during the relevant period and issued an unfavorable  
6 decision. (*Id.*). After the Appeals Council remanded the matter back to ALJ Hoover, she again  
7 found that Butcher was not disabled. (*Id.*).

8 Butcher next commenced suit seeking judicial review of ALJ Hoover’s decision, but the  
9 matter was remanded after the parties stipulated to a voluntary remand. (*Id.* at 3). After a hearing  
10 on the matter for a third time, ALJ Zeidman found that Butcher was not disabled. (*Id.*). ALJ  
11 Zeidman issued an unfavorable decision on January 4, 2023. (*Id.*).

12 ALJ Zeidman determined that Butcher did not have sufficiently severe impairments, or a  
13 combination of impairments; that Butcher had the “residual function capacity” to perform “light  
14 work” as defined in 20 C.F.R. 404.1567(b) with some limitations; and that although Butcher could  
15 no longer perform past relevant work, there are still a significant number of jobs that he *can*  
16 perform, based on his age, education, work experience, and residual functional capacity. (*Id.* at  
17 4). Butcher then commenced this action for judicial review of ALJ Zeidman’s decision. (*Id.*).

18 Butcher moved for a reversal of ALJ Zeidman’s decision, and a remand of the matter for  
19 further administrative proceedings with a different ALJ. (ECF No. 16). The Commissioner filed  
20 a counter-motion to affirm the decision and deny Butcher’s motion. (ECF No. 18). After reviewing  
21 the parties’ briefs and the administrative record, the magistrate judge issued a report and  
22 recommendation. (ECF No. 22). The magistrate judge found the Commissioner’s decision to be  
23 supported by substantial evidence and free from legal error and therefore recommended that  
24 Butcher’s motion be denied, and the Commissioner’s motion be granted. (*Id.* at 8). Butcher  
25 objected. (ECF No. 24).

## 26 **II. Legal Standard**

27 A party may file specific written objections to the findings and recommendations of a  
28 United States magistrate judge made pursuant to Local Rule IB 1-4. 28 U.S.C. § 636(b)(1)(B);

1 LR IB 3-2. If a party timely objects to a magistrate judge's report and recommendation, the court  
 2 must "make a *de novo* determination of those portions of the [report and recommendation] to which  
 3 objection is made." 28 U.S.C. § 636(b)(1).<sup>1</sup> The court "may accept, reject, or modify, in whole  
 4 or in part, the findings or recommendations made by the magistrate." *Id.* "The district judge may  
 5 also receive further evidence or remand the matter to the magistrate judge with instructions." LR  
 6 IB 3-2(b).

7 Pursuant to Local Rule IB 3-2(a), a party may object to the report and recommendation of  
 8 a magistrate judge within fourteen (14) days from the date of service of the findings and  
 9 recommendations. A party making objections must support those objections with points and  
 10 authorities. LR IB 3-2(a). Any responses to objections must be filed and served fourteen (14)  
 11 days after service of the objection. (*Id.*).

### 12 **III. Discussion**

13 This court may "set aside the Commissioner's denial of benefits when the ALJ's findings  
 14 are based on legal error or are not supported by substantial evidence in the record as a whole."  
 15 *Schneider v. Commissioner of the SSA*, 223 F.3d 968, 973 (9th Cir. 2000). "Substantial evidence  
 16 means more than a mere scintilla but less than a preponderance; it is such relevant evidence as a  
 17 reasonable mind might accept as adequate to support a conclusion." *Andrews v. Shalala*, 53 F.3d  
 18 1035, 1039 (9th Cir. 1995). "The ALJ is responsible for determining credibility, resolving  
 19 conflicts in medical testimony, and for resolving ambiguities." *Id.* "[W]here the evidence is  
 20 susceptible to more than one rational interpretation," the ALJ's decision must be affirmed. *Id.* at  
 21 1039-40.

22 Butcher challenged the Commissioner's decision on two grounds. The first is that the ALJ  
 23 did not adequately address the alleged flare-ups caused by his medical conditions and how they  
 24 affect his ability to *maintain* work, rather than merely obtain work. (ECF No. 16, at 15). The  
 25 magistrate judge determined that the ALJ *did* consider Butcher's claims of flare-ups but concluded  
 26 that they were inconsistent with the medical record and that this conclusion was supported by

---

27  
 28 <sup>1</sup> "[T]he district judge must review the magistrate judge's findings and recommendations  
*de novo* if objection is made, but not otherwise." *United States v. Reyna-Tapia*, 328 F.3d 1114,  
 1121 (9th Cir. 2003) (en banc).

1 substantial evidence. (ECF No. 22, at 6; *see also* footnote 5 on page 6).

2 The ALJ may only reject a claimant's testimony about the severity of symptoms by giving  
3 specific, clear, and convincing reasons. *See Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).  
4 (ECF No. 22, at 5; ECF No. 16, at 2). A court should not second-guess an ALJ's determination to  
5 discount a claimant's testimony if that determination is supported by substantial evidence.  
6 *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012). Butcher argues that the magistrate judge  
7 failed to explain how the ALJ satisfied his burden of providing specific, clear, and convincing  
8 reasons. (ECF No. 16, at 2). The court disagrees.

9 The R&R highlights the ALJ's specific reason for discounting Butcher's testimony  
10 regarding flare-ups—it was inconsistent with the medical record, “which included unremarkable  
11 imaging studies and normal or near normal findings;” it was “inconsistent with the testimony of  
12 the medical expert;” and “inconsistent with the conservative nature of his treatment.” (ECF No.  
13 22, at 6). These are specific, clear, and convincing reasons supported by substantial evidence in  
14 the administrative record, and when “evidence reasonably supports either confirming or reversing  
15 the ALJ's decision, [the court] may not substitute [its] judgment for that of the ALJ.” *Tackett v.*  
16 *Apfel*, 180 F.3d 1094, 1098 (9th Cir.1999). Butcher's first objection is overruled.

17 Butcher next argued that the ALJ did not appropriately weigh the opinions of Dr. Huang,  
18 his treating physician, and that the ALJ's reasoning for rejecting Dr. Huan's opinions was  
19 inadequate. (ECF No. 16, at 17–18). The magistrate judge found that the ALJ “did not err in  
20 discounting the opinions of Dr. Huan” because the ALJ found them inconsistent with the medical  
21 record—a finding supported by substantial evidence. (ECF No. 22, at 7). Butcher objects that the  
22 magistrate judge did not properly analyze the ALJ's decision. (ECF No. 24, at 4).

23 A treating physician's opinion is generally given deference over the opinion of an  
24 examining physician. *E.g., Ghanim v. Colvin*, 763 F.3d 1154, 1160 (9th Cir. 2014). If the treating  
25 physician's opinion is “well-supported by medically acceptable clinical and laboratory diagnostic  
26 techniques and is not inconsistent with the other substantial evidence in the case record, it will be  
27 given controlling weight” and the ALJ may not reject it unless he provides “clear and convincing  
28 reasons that are supported by substantial evidence.” *Id.* (cleaned up) (citations omitted).

1           On the other hand, if a treating physician’s opinion is contradicted by the medical record,  
2     the ALJ *must* “consider the factors set out in 20 C.F.R. § 404.1527(c)(2)–(6) in determining how  
3     much weight to afford the treating physician’s medical opinion.” *Id.* (citations omitted). These  
4     factors include the length and frequency of the treating relationship, the “[n]ature and extent” of  
5     the treating relationship, the supportability of the treating physician’s opinion by medical evidence,  
6     and the consistency of the treating physician’s opinion with the record as a whole. 20 C.F.R. §  
7     404.1527(c)(2)–(6). The ALJ may not reject a treating physician’s contradicted opinion unless he  
8     provides “specific and legitimate reasons that are supported by substantial evidence.” *Ghanim*,  
9     763 F.3d at 1161. This burden is met if the ALJ sets out a detailed and thorough summary of the  
10    facts and conflicting clinical evidence, stating his interpretation thereof, and making findings.”  
11    *Thomas v. Barnhart*, 278 F.3d 947, 957 (9th Cir. 2002) (quotations omitted).

12           The magistrate judge determined that the “specific and legitimate reasons” standard applies  
13    here because substantial evidence supports the ALJ’s finding that the medical record contradicts  
14    Dr. Huang’s opinion. (ECF No. 22, at 7). Butcher agrees and does not object to this. (ECF No.  
15    24, at 4). However, that is where the R&R’s analysis ends. The magistrate judge does not analyze  
16    whether the ALJ considered the factors outlined in 20 C.F.R. § 404.1527(c) or whether the ALJ’s  
17    reasoning *meets* the “specific and legitimate reasons” standard. (*See* ECF No. 22, at 7–8). It is  
18    unclear from the R&R whether the ALJ committed reversible error. The court will therefore  
19    remand this matter back to the magistrate judge for further analysis, consistent with this order.

20    ...

21    ...

22    ...

23    ...

24    ...

25    ...

26    ...

27    ...

28    ...

1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiff James  
4 Christopher Butcher's objection to the magistrate judge's Report and Recommendation (ECF No.  
5 24) is OVERRULED in part. This matter is REMANDED to the magistrate judge for a  
6 recommendation on whether the ALJ properly considered the 20 C.F.R. § 404.1527(c) factors or  
7 met the "specific and legitimate reasons" standard.

8 DATED May 16, 2024.

9  
10   
11 \_\_\_\_\_  
12 UNITED STATES DISTRICT JUDGE  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28